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Southern Building Code Congress International

EASTERN DISTRICT OF TEXAS

AUG 11 2003

DAVID J. WILKINS, CLERK
BY *David J. Wilkins*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

PETER VEECK,
d/b/a Regional Web

Plaintiff,

v.

SOUTHERN BUILDING CODE
CONGRESS INTERNATIONAL, INC.

Defendants.

Case No: 4:98CV63
(Judge Folsom)

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR
FINAL JUDGMENT**

ORIGINAL

SBCCI'S RESPONSE TO PLAINTIFF'S MOTION FOR JUDGMENT

RESPONSE

Defendant Southern Building Code Congress International, Inc (SBCCI) respectfully submits that Final Judgment on all issues at this time would be improper without taking into consideration the herein-stated stipulation of the parties, and that an award of attorney's fees at this time is also improper. Grounds for SBCCI's contentions are set forth hereinafter.

I. SBCCI'S LICENSE CLAIM SHOULD BE DISMISSED WITHOUT PREJUDICE

As noted in Plaintiff's motion, there remains an issue as to the scope of the Fifth Circuit's Mandate with respect to the issue of Veeck's alleged violation of the software license agreement. Rather than litigate this issue, the parties have agreed to stipulate to the dismissal without prejudice of the SBCCI Licensing claims, denominated as Count VII to SBCCI's Amended Counterclaim filed December 14, 1998. The undersigned attorney of record for SBCCI has conferred with Eric Weisberg, attorney of record for Plaintiff Peter Veeck, and Mr. Weisberg has consented to the dismissal without prejudice as to Count VII of the Amended Counterclaim. Therefore, SBCCI, with the consent of Plaintiff's attorney, asks that Count VII be dismissed without prejudice and any dismissal of SBCCI's claims by the Court pursuant to the mandate of the Fifth Circuit indicate that Count VII was dismissed without prejudice.

II. ANY AWARD OF ATTORNEY'S FEES IS PREMATURE

In its Motion for Final Judgment, Plaintiff Peter Veeck asks the Court to award attorney's fees; however, under 17 U.S.C. 505, the Copyright Act clearly sets forth that the Court *in its discretion may allow the full recovery of costs by or against any party*. The court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

1 In this case, the Court granted summary judgment for SBCCI on its copyright claims for
2 the unauthorized posting of SBCCI's copyrighted work on the Internet. A panel of the Fifth
3 Circuit Court of Appeals affirmed the Court's grant of summary judgment, however the *en banc*
4 Fifth Circuit Court, in an 8-6 decision, reversed the grant of summary judgment and entered the
5 mandate to dismiss SBCCI's claims. The majority in the Fifth Circuit went to some length in
6 reaching its decision without invalidating SBCCI's copyright in its Model Codes, rather basing
7 its decision on an interpretation that the adoption of the codes by a municipality defeated
8 SBCCI's right to enforce the copyright claim. *Certiorari* was denied by the Supreme Court.
9

10
11 Inasmuch as the award of attorney's fees and other costs is discretionary, and since this
12 case arose as a declaratory judgment action based on SBCCI's lawful efforts to protect its still
13 valid copyright interests, SBCCI respectfully submits that whether such costs, inclusive of
14 Attorney's fees, should be awarded is a matter of equitable consideration, which should only be
15 determined by the court after the parties have been given an opportunity to fully brief the issues
16 involved pursuant to Federal Rule of Civil Procedure 54(d)(1) & (2). Accordingly, SBCCI
17 respectfully requests the Court to enter a briefing schedule on the issue of costs including
18 attorney's fees.
19

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21 Dated: August 8, 2003
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Respectfully submitted,

SMITH, GAMBRELL & RUSSELL, LLP

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24 By: 
25

Robert J. Veal
Attorneys for Defendants
SOUTHERN BUILDING CODE
CONGRESS INTERNATIONAL, INC.
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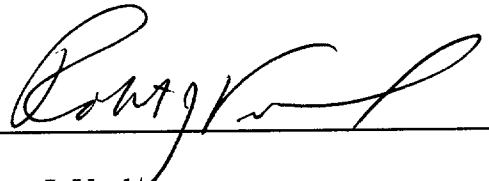
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

PETER VEECK,)	
d/b/a Regional Web)	Case No. 4:98 CV63
)	(Judge Folsom)
Plaintiff,)	
v.)	DEFENDANTS' RESPONSE TO
)	PLAINTIFF'S MOTION FOR
SOUTHERN BUILDING CODE)	FINAL JUDGMENT
CONGRESS INTERNATIONAL, INC.,)	
)	
Defendants.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR FINAL JUDGMENT upon Counsel listed below by depositing a copy of same for next day delivery with Federal Express on the 8th day of August, 2003.

Eric Weisberg, Esq.
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Robert J. Veal
Attorney for Defendants
Southern Building Code Congress
International, Inc.